CASE NO. ____________

IN THE

SUPREME COURT OF THE UNITED STATES

LENORE LUANN ALBERT, *Petitioner*

vs.

STATE BAR OF CALIFORNIA, *Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO

CALIFORNIA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the California State Bar standard 1.6 of 'clear and convincing evidence' with the burden falling on the attorney being prosecuted is unconstitutional because the proceeding is quasi-criminal in nature thus offending the member's rights under the Fifth Amendment (self-incrimination) and Fourteenth Amendment (fair and meaningful hearing) of the U.S. Constitution.

Whether California State Bar's procedure in a lawyer discipline case which bars the disciplined lawyer from petitioning review of any grievance to a judge under Article III of the U.S. Constitution or under Article VI of the California Constitution satisfies the right to a fair and meaningful hearing under the procedural due process guarantees of the Fourteenth Amendment and/or violates the lawyer's right to petition under the First Amendment.

Whether depriving the disciplined attorney reasonable notice of her date of her license to practice law being suspended in advance of the suspension violates the due process clause of the Fourteenth Amendment.

Whether California State Bar's procedure of generating revenue from lawyers being disciplined violates the Fourteenth Amendment Due Process and Equal Protection Clause because it gives the prosecutor, investigator, and judge an incentive to produce a certain adverse outcome.

Whether suspending and conditioning reinstatement of a lawyer's license to practice law based on the lawyer's lack of wealth violates the equal protection clause and due process clause of the Fourteenth Amendment.

Whether the standards laid out in *Yick v Wo* apply when a State Bar interferes with a bar member's license during their campaign for District Attorney.

Whether California State Bar prohibition of allowing lawyers to prove the orders being prosecuted were void makes California Business & Professions Code Section 6103 unconstitutional.

Whether California State Bar's suspension of an attorney's license to practice law for failure to pay a private third party a debt violates the attorney's Fifth and Fourteenth Amendment.

Whether California State Bar prohibition of allowing lawyers to prove cooperation with State Bar investigations with evidence of other simultaneous ongoing investigations makes California Business & Professions Code Section 6068(i) unconstitutional because it is vague, uncertain or overbroad.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the highest state court to review the merits dated June 30, 2017 appears at Appendix A to the petition and is unpublished.

The opinion of the court dated October 19, 2016 appears at Appendix B to the petition and is unpublished.

1 JURISDICTION

The date on which the highest state court decided my case was on December 13, 2017. A copy of that decision appears at Appendix C.

A timely petition for rehearing was thereafter denied on the following date: February 14, 2018, and a copy of the order denying rehearing appears at Appendix D.

Motion to reinstate petitioner's license, modify the California Supreme court order and/or wiave the fees conditioned upon reinstatement was denied on May 04, 2018. A copy of that order appears at Appendix E.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

This Petition for Writ of Certiorari is filed within 90 days of the California Supreme Court's denial of the Petition for Rehearing, under Rules 13.1 and 29.2 of this Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following Amendments to the U.S. Constitution, articles to the California Constitution, rules, regulations, and statutes, or relevant portion thereof are at issue in this petition:

The First Amendment provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S.C.S. Const. Amend. I

The Fifth Amendment's Self-Incrimination Clause provides:

No person shall be . . . compelled in any criminal case to be a witness against himself.

U.S.C.S. Const. Amend. V

The Fifth Amendment's Due Process Clause provides:

No person shall be . . . deprived of life, liberty, or property, without due process of law.

U.S.C.S. Const. Amend. V

The Fourteenth Amendment, Article 1 provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S.C.S. Const. Amend. XIV Art 1

CALIFORNIA CONSTITUTION ARTICLE VI SECTION 6 AS ADDED BY PROPOSITION 220 IN 1998:

Text of Section 6:

(a) The Judicial Council consists of the Chief Justice and one other judge of the Supreme Court, three judges of courts of appeal, 10 judges of superior courts, two nonvoting court administrators, and any other nonvoting members as determined by the voting membership of the council, each appointed by the Chief Justice for a three-year term pursuant to procedures established by the council; four members of the State Bar appointed by its governing body for three-year terms; and one member of each house of the Legislature appointed as provided by the house.

(b) Council membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term.

Cal Const. Art VI Sect. 6

CALIFORNIA CONSTITUTION ARTICLE VI SECTION 9

The State Bar of California is a public corporation. Every person admitted and licensed to practice law in this State is and shall be a member of the State Bar except while holding office as a judge of a court of record.

Cal Const. Art VI Sect. 9

CALIFORNIA BUSINESS & PROFESSION CODE

6103. A willful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear, and any violation of the oath taken by him, or of his duties as such attorney, constitute causes for disbarment or suspension.

6068. It is the duty of an attorney to do all of the following:

(e) (1) To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.

(h) Never to reject, for any consideration personal to himself or herself, the cause of the defenseless or the oppressed.

(i) To cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against himself or herself. However, this subdivision shall not be construed to deprive an attorney of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subdivision shall not be construed to require an attorney to cooperate with a request that requires him or her to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the attorney's practice. Any exercise by an attorney of any constitutional or statutory privilege shall not be used against the attorney in a regulatory or disciplinary proceeding against him or her.

6140.7 Costs assessed against a member publicly reproved or suspended, where suspension is stayed and the member is not actually suspended, shall be added to and become a part of the membership fee of the member, for the next calendar year. Unless time for payment of discipline costs is extended pursuant to subdivision (c) of Section 6086.10, costs assessed against a member who resigns with disciplinary charges pending or by a member who is actually suspended or disbarred shall be paid as a condition of reinstatement of or return to active membership.

6086.10 (a) Any order imposing a public reproval on a member of the State Bar shall include a direction that the member shall pay costs. In any order imposing discipline, or accepting a resignation with a disciplinary matter pending, the Supreme Court shall include a direction that the member shall pay costs. An order pursuant to this subdivision is enforceable both as provided in Section 6140.7 and as a money judgment.
(b) The costs required to be imposed pursuant to this section include all of the following:
(1) The actual expense incurred by the State Bar for the original and copies of any reporter's transcript of the State Bar proceedings, and any fee paid for the services of the reporter.
(2) All expenses paid by the State Bar which would qualify as taxable costs recoverable in civil proceedings.
(3) The charges determined by the State Bar to be "reasonable costs" of investigation, hearing, and review. These amounts shall serve to defray the costs, other than fees for the services of attorneys or experts, of the State Bar in the preparation or hearing of disciplinary proceedings, and costs incurred in the administrative processing of the disciplinary proceeding and in the administration of the Client Security Fund.
(c) A member may be granted relief, in whole or in part, from an order assessing costs under this section, or may be granted an extension of time to pay these costs, in the discretion of the State Bar, upon grounds of hardship, special circumstances, or other good cause.
(d) In the event an attorney is exonerated of all charges following a formal hearing, he or she is entitled to reimbursement from the State Bar in an amount determined by the State Bar to be the reasonable expenses, other than fees for attorneys or experts, of preparation for the hearing.
(e) In addition to other monetary sanctions as may be ordered by the Supreme Court pursuant to Section 6086.13, costs imposed pursuant to this section are penalties, payable to and for the benefit of the State Bar of California, a public

corporation created pursuant to Article VI of the California Constitution, to promote rehabilitation and to protect the public. This subdivision is declaratory of existing law.

California Rule 9.16. (CRC 9.16) Grounds for review of State Bar Court decisions in the Supreme Court

(a) Grounds

The Supreme Court will order review of a decision of the State Bar Court recommending disbarment or suspension from practice when it appears:

(1) Necessary to settle important questions of law;

(2) The State Bar Court has acted without or in excess of jurisdiction;

(3) Petitioner did not receive a fair hearing;

(4) The decision is not supported by the weight of the evidence; or

(5) The recommended discipline is not appropriate in light of the record as a whole.

(Subd (a) amended effective January 1, 2007; adopted by the Supreme Court effective February 1, 1991.)

(b) Denial of review

Denial of review of a decision of the State Bar Court is a final judicial determination on the merits and the recommendation of the State Bar Court will be filed as an order of the Supreme Court.

(CRC 9.16 was formerly CRC 954)

CALIFORNIA STATE BAR STANDARDS

1.5 AGGRAVATING CIRCUMSTANCES The State Bar must establish aggravating circumstances by clear and convincing evidence. Aggravating circumstances may include: ...(j) significant harm to the client, the public, or the administration of justice; (k) indifference toward rectification or atonement for the consequences of the misconduct;

1.6 MITIGATING CIRCUMSTANCES A member must establish mitigating circumstances by clear and convincing evidence. Mitigating circumstances may include: (a) absence of any prior record of discipline over many years of practice coupled with present misconduct, which is not likely to recur; (b) good faith belief that is honestly held and objectively reasonable; (c) lack of harm to the client, the public, or the administration of justice... (f) extraordinary good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of the misconduct; (g) prompt objective steps, demonstrating spontaneous remorse and recognition of the wrongdoing and timely atonement; (h) remoteness in time of the misconduct and subsequent rehabilitation; (i) excessive delay by the State Bar in conducting disciplinary proceedings causing prejudice to the member; or (j) restitution was made without the threat or force of administrative, disciplinary, civil or criminal proceedings.

STATEMENT OF THE CASE

This disciplinary suit arises from Petitioner's representation of a married couple in an unlawful detainer proceeding that were previously defending themselves in pro per.

Petitioner has been a member in good standing with this Bar since 2008 until California State Bar suspended her license on or about March 20, 2018 and back dated the suspension to February 14, 2018.

The clients were trying to prevent eviction from their home by a group of local hard money lenders because they did not believe that they were in default on their loan. There was documentary proof that in fact the lenders swapped out the terms of the Note that Petitioner's clients signed with more onerous terms and merely photocopied the client's signatures to the new note.

Unlawful detainer proceedings in California are summary proceedings without all of the constitutional safeguards in place. The main thrust in these proceedings is that anything can happen in as little as five days and they do not have to be heard by judges.

Petitioner's clients were not proceeding before a judge, but a commissioner. On August 31, 2012 the commissioner signed three discovery orders compelling Petitioner's clients to further respond to written discovery that Petitioner's clients were served with before Petitioner was representing them.

Although Petitioner was not made aware of the outstanding discovery when she stepped into the case and made some type of rudimentary response as soon as she was aware of the discovery, and the discovery motions never gave Petitioner notice that sanctions were being sought against her; the commissioner ordered Petitioner and her clients, jointly and severally, to pay attorney fees to the opposing party under the California Discovery Act. The discovery sanctions were not consolidated so that it could be an appealable order.

Petitioner and her clients filed a peremptory challenge against the commissioner based on bias. The commissioner thereafter recused himself.

A new judge was assigned to the case. At the unlawful detainer hearing the hard money lenders and loan servicer admitted that they changed the monthly loan repayment amount and balloon payment with the borrower's knowledge or consent and merely photocopied their signature pages onto the new note. However, they argued the unlawful detainer court did not have jurisdiction to hear that matter and possession under the summary proceedings was proper. The judge granted the hard money lenders judgment in their favor and executed a writ of possession. Petitioner's clients were then locked out of their home.

Three years and three months later, on December 15, 2015 the State Bar filed charges against Petitioner for failing to obey the court orders issued in the unlawful detainer case because the discovery sanctions (attorney fees) had not been paid to the hard money lenders. The following day, the hard money lender's attorneys recorded an Abstract of judgment in the County Recorder's office.

Petitioner's clients aware of the charges, nevertheless refused to waive their attorney-client privilege in this regard.

Because the State Bar opened an investigation into the matter, the State Bar demanded Petitioner pay both the hard money lenders plus that State Bar an additional $5,000.00 in order to avoid prosecution. Petitioner could not afford to pay the amount demanded. On or about December 15, 2015 the State Bar filed a Notice of Disciplinary Charges and posted it under Petitioner's member profile online alerting the public that she was charged with four violations including the disobeying the court order by failing to pay the discovery sanctions to the hard money lenders and failing to cooperate in an investigation in another matter. Neither charge was for violating any Rule of Professional Responsibility. They were allegations that Petitioner violated California Business & Professions Code sections 6068 and 6103.

On October 16, 2016 a written opinion was filed and placed on Petitioner's member page of the California State Bar website stating that she was found culpable in committing three out of the four charges with the recommendation of a one year suspension, stayed with 30 days actual suspension conditioned upon her repayment of the discovery sanctions to the hard money lenders plus over $18,000.00 to the State Bar. She would remain suspended until all amounts were paid.

She appealed to the review department. The review department found that Petitioner was culpable in committing only two out of the four charges and kept the recommended punishment unchanged.

So, she petitioned the California Supreme Court for review. On December 13, 2017 the California Supreme Court summarily denied review. On February 14, 2018 it also denied her petition for rehearing.

On February 20, 2018 Petitioner filed for bankruptcy under Chapter 13.

On March 9, 2018 Petitioner checked the status of her license which still showed active and able to practice law so she paid her filing fee to run as the first female ever elected in Orange County as District Attorney. She requested a fee waiver for the $32,000.00 cost of a candidate statement based on indigency.

On March 20, 2018 the State Bar informed Petitioner that her thirty day suspension had been back dated to start on February 14, 2018 and they were not going to reinstate her license until she paid the State Bar over $18,000.00 and the hard money lenders over $5,000.00 plus interest. She had made her first plan payment under Chapter 13.

Petitioner moved the State Bar court, the Review Department, and the California Supreme Court to modify the order conditioning reinstatement based on payment, and waive the fees and costs associated with reinstatement of her license due to her indigent status. On May 4, 2018 the Review Department denied the request in Bank. Once again, The California Supreme Court did not act.

Initially, the federal questions were raised in a motion to dismiss the charges in the State Bar court. They were raised again during "trial" and in trial motion papers and requests filed by Petitioner.

Petitioner then raised her constitutional concerns to the Review Department and then to the California Supreme Court.

She also raised them in the U.S. District Court, Orange County Superior Court, California Court of Appeal, and before the U.S. Bankruptcy court. However, the State Bar insists that none of these other venues have subject matter jurisdiction over this matter. In fact, the only venue that appears in the mind of the California State Bar to hold subject matter jurisdiction is the California Supreme Court but in or about 1998, the California Supreme Court and legislature changed the way disciplinary proceedings are reviewed which gave the California Supreme Court discretion to review the matter or not. There has been no substantial review by the California Supreme Court since the rule change – leaving lawyers in California the only professionals that can never seem to get their cases reviewed by a Constitutional VI judge. Instead the State Bar gets to act as investigator, prosecutor, judge and jury – the one venue where there is a financial incentive to investigate, prosecute, rule and find in a certain way because they are full time paid employees of the State Bar and the State Bar derives all of its revenue from its members, the most coming disciplinary matters.

> It is as much his duty to refrain from improper methods
> calculated to produce a wrongful conviction
> as it is to use every legitimate means
> to bring about a just one.
>
> *Berger v. United States*, 295 U.S. 78 * (U.S. 1935)

REASONS FOR GRANTING THE PETITION

I.

THE US SUPREME COURT SHOULD HEAR THIS MATTER BECAUSE PETITIONER DID NOT RECEIVE A FAIR OR MEANINGFUL HEARING AND NO CONSTITUTIONAL COURT HAS JURISDICTION WHERE SHE CAN ADDRESS HER GRIEVANCES

A. Whether the California State Bar standard 1.6 of 'clear and convincing evidence' with the burden falling on the attorney being prosecuted is unconstitutional because the proceeding is quasi-criminal in nature thus offending the member's rights under the Fifth Amendment (self-incrimination) and Fourteenth Amendment (fair and meaningful hearing) of the U.S. Constitution.

Ms. Albert did not receive a fair hearing on the culpability portion of the §6068(i) or the §6103 charges because the State Bar court did not allow testimony or evidence on the material issues which were relevant to Ms. Albert's case as stated above.

The State Bar erroneously refused to allow many of Ms. Albert's witnesses to testify on her behalf or allow her to produce evidence at trial in her defense. [RT 3:1-11; 2:79-81] Due Process should dictate that the Attorney is afforded a full and adequate opportunity to demonstrate that the charge is erroneous. XIV Amend. U.S. Const Art I. *In re Ruffalo*, 390 U.S. 544, 550, 88 S. Ct. 1222, 1226, 20 L. Ed. 2d 117 (1968)

Although Petitioner was not allowed to call her witnesses or introduce all of her evidence, California has decided an attorney shares the burden of proof by clear and convincing evidence in order to avoid discipline although this Court already determined attorneys must be afforded due process because disciplinary proceedings are quasi-criminal in nature. *In re Ruffalo,* 390 U.S. 544, 550, 88 S. Ct. 1222, 1226, 20 L. Ed. 2d 117 (1968)

California statutes splitting the burden of proof/burden of persuasion between the attorney and the State Bar in attorney disciplinary proceedings. This conflict with the State Bar statutes of other states leading to disparate results and with this Court's precedent holding such proceedings are quasi-criminal in nature.

California State Bar places the burden of proof on the attorney being prosecuted under Standard 1.6 to prove by 'clear and convincing evidence' there is some mitigation to the charges being alleged before the prosecution has rested and before the judge has ruled on culpability.

This Court should determine whether placing the burden of proof and persuasion on an attorney being prosecuted is unconstitutional because the proceeding is quasi-criminal in nature thus offending the member's rights under the Fifth Amendment (self-incrimination) and Fourteenth Amendment (fair and meaningful hearing) of the U.S. Constitution. *In re Ruffalo,* 390 U.S. 544, 550, 88 S. Ct. 1222, 1226, 20 L. Ed. 2d 117 (1968)

Determining the proper burden of proof and which party shoulders it is a compelling reason for the exercise of the Court's discretionary jurisdiction because attorneys deserve comity.

As it exists today, each state uses a different burden of proof from preponderance of the evidence to clear and convincing evidence. The states also differ as to which party bears the burden or if it is split.

The reasons for granting review of this petition, overlap with *Crampton v Commission for Lawyer Discipline* 17-1527 in the broader sense that attorneys in California, like the attorneys in Texas are being denied their substantive and procedural Fourteenth Amendment due process rights to a fair and meaningful hearing.

Being able to keep a professional license under equal protection of the law is a fundamental right. Lawyer disciplinary cases are "quasi-criminal" adversarial proceedings. *In re Ruffalo*, 390 U.S. 544, 551, 88 S. Ct. 1222, 1226, 20 L. Ed. 2d 117 (1968). Consequently, comity of burden of proof/persuasion required before taking away a professional's right to practice law should be a national concern appropriate for review and determination by this Court.

The California State Bar court determined that by Petitioner not taking the stand in her defense, she could never meet her burden of proof (although California law required the State Bar to prove culpability by clear and convincing evidence). California actually splits the burden of proof and uses evidentiary presumptions to shift the burden to the attorney in many instances. Std 1.6 requires the State Bar member to prove by "clear and convincing evidence" any mitigation to culpability or aggravating factors suggested by the prosecution.

This shifting and heightened 'clear and convincing standard' for the member to meet is unconstitutional due to the quasi criminal nature of the proceeding. In contrast, the criminal jury instructions in California make it clear that the defense never has the heightened burden of proof in order to prove an affirmative defense such as entrapment (burden is preponderance of the evidence CALCRIM 3408). In fact, the prosecution still carries the burden in most of the defenses in California criminal trials. (See, e.g. CALCRIM 3402, 3404-3406, 3411-3413, and 3425).

Oregon State Bar does not have the Bar member shoulder any burden. (OSB Rule 5.2 and no separate rule on mitigation). West Virginia State Bar uses a "preponderating and clear evidence" standard only required of the *State Bar Committee on Legal Ethics v Smith* 399 S.E. 2d 36 (1990) (no separate rule on mitigation). Texas State Bar uses preponderance of the evidence standard again solely relegated to the prosecutor to prove. (no separate rule on mitigation).

There is no comity of law on burden of proof and burden of persuasion amongst the states. It's anarchy. Considering the drastic implications of losing a professional license, and the fact that California has carved out a portion of the proceeding and deemed the burden to shift to the bar member to prove by clear and convincing evidence whenever there is an issue of mitigation or presumption at play, this Court should take up the issue.

Also, it appears that the law is not settled as to whether a Fifth Amendment violation can occur where no criminal case was ever initiated. This Court granted certiorari in *City of Hays, Kansas* v. *Vogt* (No. 16-1495), to determine in a § 1983 case "[w]hether the Fifth Amendment is violated when statements are used at a probable cause hearing but not at a criminal trial." If it is not clearly established that use at a probable cause hearing violates the Fifth Amendment, then it is *a fortiori* not clearly established that considering a refusal to answer in a noncriminal licensing decision violates the Amendment. To such an extent, this petition holds similar issues to the *Michigan Gaming Control Board v Moody,* 17-1142 (petition for cert denied).

The State Bar argued Ms. Albert did not testify so "the State Bar Court was entitled to conclude from the evidence she willfully disobeyed three court orders." [RB 9] The California Supreme Court adopted that argument when refusing to review her petition from the Hearing Department decision. *Mens rea* should not be shifted to the State Bar member in a quasi-criminal hearing and it is an issue this Court has never decided in the attorney licensing context. Thousands of attorneys across California and the nation could benefit from this Court's review. Petitioner contends that the State Bar is violating her Fifth Amendment rights by requiring her to surrender her right to remain silent in exchange for maintaining licensure.

B. Whether California State Bar's procedure in a lawyer discipline case which bars the disciplined lawyer from petitioning review of any grievance to a judge under Article III of the U.S. Constitution or under Article VI of the California Constitution satisfies the right to a fair and meaningful hearing under the procedural due process guarantees of the Fourteenth Amendment and/or violates the lawyer's right to petition under the First Amendment is an important question of federal law that has not been, but should be, settled by this Court

In California there is no required review by a Constitutionally appointed or elected sitting judge before the attorney's license is ripped away from them. It is *sui generis.*

In California, judges are appointed to a State Bar court that are not in a Title VI court (Cal Const Art VI), and prosecutors get to hold a bench trial where there are no rules of evidence like in criminal or civil trials followed. The member can be tried on a violation of a Rule of Professional Responsibility or any other purported violation of a statute. The losing Bar member can appeal to the review department which is three more appointed State Bar judges, again not a Title VI court who then issue a ruling. Finally, the Bar member can petition the California Supreme Court to review the decision, but it has the discretion to summarily deny review and has apparently used that discretion since at least 2005.

In New York, in contrast, each Appellate Division appoints a 21 member committee of which at least three are lay persons and the rest are attorneys with their own law practice in the same community. A quorum of that committee of practicing attorneys and members of the community determines if a Rule of Professional Responsibility was violated. There is no incentive in New York's system for the State Bar investigator, prosecutor or committee members to testify or rule in a certain way. Their paycheck and benefits are not tied to the outcome whereas in California, it is directly related. See, https://www.nycourts.gov/rules/comments/PDF/Comments-Uniform-Attorney-Disciplinary-Rule.pdf

If California State Bar cannot find culpability then there is no revenue for their paychecks because the bulk of revenue comes from disciplinary proceedings and investigations, not from annual member dues. Tax dollars are not allocated to the California State Bar judges, prosecutors and investigators who are paid to work full time for the State Bar; they do not have their own law practice.

Moreover, in New York the investigation and proceedings are kept confidential. Whereas in California, the State Bar publishes the charges on its website under the member's name before any findings of fact are made.

Washington D.C. is a hybrid attorney disciplinary system between these two different systems. It has a nine member volunteer board appointed by the D.C. Court of Appeal who reviews decisions from the hearing or review department. The nine member board consists of voluntary attorneys and two members of the public. It is their final say on whether a member is punished or not. Like New York, there is no financial incentive for them to punish a member because they are all volunteers. They cannot issue orders of suspension or disbarment and their orders are subject to review by the Court of Appeal. See, https://www.dcbar.org/attorney-discipline/board-on-professional-responsibility/bprmission.cfm

California used to rely on volunteers in its disciplinary process, but that changed in or about 1998. It currently charges members approximately $400.00 per year for annual dues, but the disciplinary costs to defend charges tops $18,000.00. Its audits consistently show it is making more money than it should. California State Bar is one of the largest and most powerful agencies in the country now.

Most states like Nebraska have disciplinary matters either go into their judicial system or to their administrative hearings department that hears all licensing matters for the state. The State Bar retain their membership benefits. California split the wrong way, retaining disciplinary proceedings and creating a trade association for memberships, but that is outside the scope of this petition.

The point here is that the California supreme court is not required to actually review a finding by the State Bar of California and the rules prohibit any other court from obtaining subject matter jurisdiction in order to do so. In *In re Rose*, 22 Cal4th 430, 93 CalRptr2d 325 (2000) the majority on a split panel held that this was Constitutional because Rule 954 (n CRC 9.16) required the California Supreme Court to review the decision if there was a reason to warrant it. However, since that decision came down almost two decades ago, the California Supreme Court has yet to review one single decision made by the State Bar, finding no reason to warrant it and there is no avenue for the lawyer to proceed down in order to have that decision reviewed.[1]

Justice Brown recognized this process "seems antithetical to the constitutional design" and dissented noting that the decisionmakers were being "driven by bureaucratic agendas or political ties." To paraphrase "any process" does not equal "due process." *In re Rose*, 22 Cal4th 430, 93 CalRptr2d 325 (2000).

The California Supreme Court took away California lawyers right to meaningful judicial review of government depriving them of their license and thus their livelihood.

> "It is founded on the rock of the constitutional right to meaningful judicial review of government acts intended to deprive someone of the means of livelihood. Review by a constitutional court, review by real

[1] The closest, the California Supreme Court came to reviewing a petition by a State Bar member was in *In re Silverton*, 36 Cal.4th 81 (2005), where the California Supreme Court denied review sought by the Bar member and then decided to review the discipline imposed on its own motion and found the attorney should be disbarred without ever looking at the underlying merits. As such, this case cannot help to bolster the State Bar's position on the purportedly constitutionality of its process.

judges whose allegiance is to the judiciary, to its standards and ideals — to the rule, in short, of law."

In re Rose, 22 Cal4th 430, 93 CalRptr2d 326 (2000)

Unlike other licensed professionals, California attorneys have no right to seek a writ of mandamus from the California Superior court or any other Article VI court, meaning a real judge. Justice Brown recognized this disparate treatment. The majority and state legislature justified taking away lawyers' due process rights on the grounds there were so many attorneys in California.

"Unless, by dint of skill or luck, the issues are framed so they are deemed to fall within the ambit of rule 954, an attorney facing suspension or disbarment from the right to practice her profession gets no hearing, no opportunity for oral argument, and no written statement of reasons — from this or any other article VI court. (Cal. Const., art. VI, § 14; hereafter article VI.) Instead, she gets a summary denial of review, the one-line order. Is that enough? Regrettably, it seems that, for now at least, it will have to do.

In re Rose, 22 Cal4th 430, 93 CalRptr2d 325 (2000)

California Supreme Court justice J Kennard, also unsatisfied with the holding in *Rose*, pointed out the great irony in that "The majority's decision here produces a startling anomaly: Attorneys are the only persons whose state occupational licenses can be revoked or suspended without a judicial hearing. When the right to continue practicing a trade or profession is at stake, only attorneys are denied their day in court." *In re Rose*, 22 Cal4th 430, 93 CalRptr2d 325 (2000)

CRC 9.16 (formerly 954(a)) as applied is unconstitutional because the California supreme court does not "review disciplinary proceedings conducted in violation of the law, or which result in recommended discipline that is inappropriate under the circumstances." *In re Rose*, 22 Cal4th 430, 93 CalRptr2d 325 (2000) Since the California supreme court never actually reviews the petitions by the Bar members since its ruling in 2000, it never knows whether there was a violation of the law or if the recommended discipline was inappropriate.

Under the Equal Protection Clause of the Fourteenth Amendment, a state cannot "deny to any *person* within its jurisdiction the equal protection of the laws." Erwin Chemerinsky, Constitutional Law: Principles and Policies 767 (3d ed. 2006).

Under Standard 1.5 an aggravating factor is 'indifference.' Indifference is not defined. "Indifference" needs to be defined by the U.S. Supreme Court. Anything short of an admission of guilt by a Bar member is considered a "lack of indifference" which increases the sanction. Here, Ms. Albert had legal and factual support for her defense and she was entitled to use it. That is not indifference. That is zealous advocacy for her license. All of these tidbits add up to lawyers being denied equal protection of the laws warranting review.

II.
THE US SUPREME COURT SHOULD GRANT REVIEW TO DECIDE IMPORTANT QUESTIONS CONCERNING VIOLATIONS OF EQUAL PROTECTION AND DUE PROCESS OF FUNDAMENTAL RIGHTS BASED ON LACK OF WEALTH

A. Whether depriving the disciplined attorney reasonable notice of her date of her license to practice law being suspended in advance of the suspension violates the due process clause of the Fourteenth Amendment.

Currently, the attorney does not become informed of the first day of suspension until after the conditions as part of the suspension has passed thus giving then no fair opportunity to comply. For example, Petitioner was given a 30 day suspension. On March 20, 2018 the State Bar first informed Petitioner that her 30 day suspension actually started on February 14, 2018 relying on CRC 9.16. Neither the order itself nor any California Rules of Court make it clear that Petitioner had any notice her first day of suspension would occur on February 14, 2018 before February 14, 2018. That violates due process. It was impossible for Petitioner or any other attorney to comply with the main term of suspension (stop practice of law) when they are not notified in advance.

This Court's longstanding view is that "due process is flexible and calls for such procedural protections as the particular situation demands." *Morrissey* v. *Brewer*, 408 U.S. 471, 481 (1972). "If the right to notice and a hearing is to serve its full purpose, then, it is clear that it must be granted at a time when the deprivation can still be prevented." *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) There is no compelling government interest in failing to give attorneys who are going to be suspended from practice reasonable notice so that they can wind up legal matters, get their financial affairs in order and transfer their clients as necessary to other legal professionals. The risk of harm to the bar member and to her clients, on the other hand, is substantial. Clients who owe money for costs and services advanced have no incentive to pay the attorney now suspended leaving the attorney in a financial lurch. Court deadlines and other matters scheduled for the handling attorney create a crises for the new attorney that must handle the trial files. Moreover, the conditions of probation such as not practicing law become impossible to comply with because attorneys practice law on a daily basis until they have notice of an actual, verifiable suspension.

No court has subject matter jurisdiction over the California State Bar to hear and decide this issue that is a core federal right of great importance to thousands of professionals, so the U.S. Supreme Court should use its discretion and grant review. Without it, there is truly no absolute right to petition for an attorney's grievances under the First Amendment in California.

B. Whether California State Bar's procedure of generating revenue from lawyers being disciplined violates the Fourteenth Amendment Due Process and Equal Protection Clause because it gives the prosecutor, investigator, and judge an incentive to produce a certain adverse outcome.

First, unlike other states, California State Bar holds its own disciplinary hearings by paid staff in a court that is not a constitutional court. It also supports itself financially from charging attorneys in excess of $18,000.00 to defend themselves against the charges. Whether holding a quasi-criminal proceeding without constitutional court review before the investigator, prosecutor, judge and jury who have a financial incentive to make sure a result against the attorney occurs has never been tested by this court. The pulling of money on one end and the bar member trying to save their license on the other.

To pass strict scrutiny, the government has the burden of proving its law or policy (1) provides a compelling government interest; (2) that is narrowly tailored in such a way to achieve that goal; and (3) this is the least restrictive means in order for the government to achieve that compelling government interest.

> "when determining which rights are "fundamental" for due process purposes [under the U.S. Constitution], a court's attention focuses

> primarily on whether the right (1) is specifically guaranteed by the Constitution, (2) affects the integrity of the political process, or (3) has a disproportionate impact upon a discrete and insular minority. (U.S. v. Carolene Products Co. (1938) 304 U.S. 144, 152-153, fn. 4 [82 L. Ed. 1234, 1241, 1242, 58 S. Ct. 778].)" *Berlinghieri v. Department of Motor Vehicles* 33 Cal 3d 394 (1983)

Second, California supreme court has already found that retention of a drivers license is a right or interest important enough to individuals in their life situations to require an independent judicial review of the evidence and as such rises to a fundamental right under the Bixby analysis. *Berlinghieri v. Department of Motor Vehicles* 33 Cal 3d 394, 398 (1983)However, this same court does not find a lawyer's professional license is a right or interest important enough to require an independent judicial review, and as such California is discriminating against lawyers as a profession. Just like a drivers license, "the revocation or suspension of that [Bar] license, even for a six-month period, can and often does constitute a severe personal and economic hardship." *Berlinghieri v. Department of Motor Vehicles* 33 Cal 3d 394, 398 (1983), *citing Bell v. Burson* (1971) 402 U.S. 535, 539 [29 L. Ed. 2d 90, 94, 91 S. Ct. 1586] As such, California's failure to have a Constitutional court independently review the entire administrative record before deciding to suspend or revoke an attorney's license should be reviewed to determine if that is constitutional. *Berlinghieri v. Department of Motor Vehicles* 33 Cal 3d 394, 398-399 (1983)

In *Konigsberg v State Bar of California*, 353 US 252, 273 (1957) the US Supreme Court reviewed the California State Bar's role in determining whether Konigsberg was of good moral character. This was during the communist scare of the 1950s when people were being haled into star chambers hearings and grilled about their Associations and affiliations with others. This Court reversed and remanded noting that "We recognize the importance of leaving States free to select their own bars, but it is equally important that the State not exercise this power in an arbitrary or discriminatory manner nor in such way as to impinge on the freedom of political expression or association. A bar composed of lawyers of good character is a worthy objective but it is unnecessary to sacrifice vital freedoms in order to obtain that goal. It is also important both to society and the bar itself that lawyers be unintimidated —free to think, speak, and act as members of an Independent Bar." *Konigsberg v State Bar of California*, 353 US 252, 273 (1957)

It appears that in 2000, the California State Bar stepped into the wayback machine and entered the court of Freisler in Germany.

C. Whether suspending and conditioning reinstatement of a lawyer's license to practice law based on the lawyer's lack of wealth violates the equal protection clause and due process clause of the Fourteenth Amendment.

This Court has determined that criminal statutes that discriminate based on economic status violates a person's rights under the equal protection and due process clause as a fundamental right. This Court has never determined if the same is true for licensed attorneys subjected to quasi-criminal disciplinary proceedings and it should because it affects thousands attorneys, their livelihoods and those underrepresented segments of the public that impecunious so often represent.

The California State Bar conditioned Petitioner's reinstatement to practice law after her thirty day suspension based on payment of money to private third parties (not her clients or children or spouse) in the amount of $8,929.37 and to the State Bar in excess of $18,000.00. The Review Department denied an order requesting to modify or waive the fees on the grounds "it has no authority to do so" and there is nothing in the rules that requires the California Supreme Court to act – and in fact it has not acted on the Petitioners request. Her suspension would have been over on March 16, 2018 if she could have afforded to pay these fees. The only reason her license was not reinstated on March 16, 2018 was on the ground she could not make these payments.

Conditioning the reinstatement of a license based on extraordinary payment should be reviewed to determine if it violates the equal protection clause and Petitioner's due process rights. The law turns any minimal suspension into a disbarment when targeted at attorneys who lack wealth like Petitioner that represent the poor and underrepresented. When government legislates or acts either on the basis of a "suspect" classification or with regard to a "fundamental" interest, the traditional standard of equal protection review is abandoned, and the Court exercises a "strict scrutiny." Under this standard government must demonstrate a high degree of need, and usually little or no presumption favoring the classification is to be expected. Language in a number of opinions appear to suggest that poverty was a suspect condition, so that treating the poor adversely might call for heightened equal protection review. For example, in *Bullock v. Carter*, 405 US 134 (1972), the Court invalidated the Texas filing-fee requirement for primary elections. The system provided "no reasonable alternative means of access to the ballot" (*id.,* at 149), so inability to pay occasioned an absolute denial of a position on the primary ballot. Here, the State Bar likewise failed to provide any reasonable alternative means of access to Petitioner's license other than payment, also creating an absolute denial of her right to her license to practice law. The Court used the strict scrutiny test to find that the law violated the equal protection clause. The same factors are present in the California disciplinary system. California charges an attorney who desires to defend against the charges over $18,000.00 to do so. According to the Review Department, the system provides no other alternative means to reinstate the Bar member's license without paying the full fee. The inability to pay due to lack of wealth of the lawyer creates an absolute denial of the right to practice law after the short suspension period is over. There is no important government purpose by blocking attorneys who lack wealth from practicing law. It is also invidious discrimination against the consumer advocate who decides to represent the poor and underrepresented. The well-heeled attorney who decides to make a larger living defending corporate or government interests would never be put in this position because their clients would pay their bills so the State Bar would not be stepping in as a Debt Collector for third parties in the first instance; and even if their clients did not pay their bills, the attorney taking home a six figure income could well afford the cost of $18,000 to defend against State Bar charges. As such the well heeled attorney would be limited to a mere 30 day suspension whereas impecunious attorneys like petitioner are suspended or effectively disbarred altogether based purely on their economic status. This leads to the ancillary effect of denying access to the courts of potential clients of lesser means. At a minimum, this Court should determine if certain fundamental liberties and interests are involved. If so whether government can justify the adverse effect by showing a compelling interest necessitating the classification and by a showing that the distinctions are required to further the governmental purpose. . Williams worked an invidious discrimination solely because he was too poor to pay the fine, and therefore violated the Equal Protection Clause. "In each case, the Constitution prohibits the State from imposing a fine as a sentence and then automatically converting it into a jail term solely because the defendant is indigent and cannot forthwith pay the fine in full." *Tate v. Short*, 401 US 395, 398 (1971) Analogous to Williams and Tate, Petitioner remains suspended solely because of her indigency and cannot forthwith pay the fine in full.

This Court has never determined if the reasoning applied in *Williams v. Illinois,* 399 US 235 (1970) and *Tate v. Short*, 401 US 395 (1971) extends to lawyers whose licenses are suspended on failure to pay outside the statutory scheme of child support obligations.

California State Bar should not be allowed to keep an attorney's license suspended based on their lack of wealth because it would inconsistent with the Equal Protection Clause of the Fourteenth Amendment. It cannot limit the punishment of suspension to payment of the statutory fees imposed if one is able to pay it, yet convert the payment of the statutory fees into an extended suspension of the practice of law or disbarment for an indigent attorney without the means to pay those fees. The suspension in such a case is not imposed to further any penal objective of the State Bar. It is imposed to augment the State Bar's revenues but obviously does not serve that purpose because the suspended attorney cannot pay because she is indigent and her suspension of her ability to practice law, rather than aiding collection of the revenue, constrains it.

The time of suspension should be limited and the same for all attorneys, without regard to their economic status. *Williams v. Illinois,* 399 US 235, 244 (1970)

Since, California Bus & Prof Code 6140.7 conditions payment for reinstatement, this Court should grant review to determine if it is consistent with the Equal Protection Clause in the case of suspending professional licenses of lawyers.

Indeed, whether California is failing to give the same amount of equal protection to the legal profession in comparison with those convicted of crimes is an issue of invidious discrimination. Cal Penal Code 1205 allows for paying fines in installments, whereas the Bus & Prof Code 9407 does not. *Tate v. Short,* 401 US 395 (1971).

Williams v. Illinois, 399 US 235 (1970), and *Tate v. Short,* 401 US 395 (1971) struck down criminal penalties that subjected indigents to incarceration simply because of their inability to pay a fine, this Court should grant review and strike down the Bus & Prof Code 6140.7.

Equal protection clause stretches beyond criminal fines. In *Bullock* v. *Carter,* 405 US 134 (1972), the Court invalidated the Texas filing-fee requirement for primary elections imposed on candidates running for office because it effectively barred all potential candidates who were unable to pay the required fee. The system provided "no reasonable alternative means of access to the ballot" *Bullock* v. *Carter,* 405 US 134 (1972), inability to pay occasioned an absolute denial of a position on the primary ballot.

Fundamental interests include the right to vote and the right to be free of wealth distinctions in the criminal process.

This Court has not answered the question whether attorneys being disciplined also enjoy the fundamental right to be free of wealth distinctions in the quasi criminal proceeding of attorney discipline, triggering active review when de jure or de facto official distinctions are made with respect to them.

There is also a split in the Ninth Circuit as to the affect this has on dischargeability. *In re Taggart* 548 BR 275 (9th Cir BAP 2016) court held the fees were dischargeable in bankruptcy. *In re Findley* 593 F3d 1048 (9th Cir 2010) court held the fees were not dischargeable. *See, Scheer v. State Bar* (In re Scheer), 819 F.3d 1206 (9th Cir. Cal. 2016) held that the fees owed to client were dischargeable but the fees owed to the State Bar were not. The mess has permeated its way into the federal US Bankruptcy system that was designed to give the debtor a fresh start. Petitioner contends that as a policy matter lurking behind the Constitutional guarantees, this Court should grant review and determine whether attorneys have a fundamental right in order to prevent the differential governmental treatment of those attempting to exercise their right.

D. Whether the standards laid out in *Yick v Wo* apply when a State Bar interferes with a bar member's license during their campaign for District Attorney.

It is undisputable that Petitioner and Respondent have a longstanding difference of opinion on their vision of how the State Bar of California should be operating for the benefit of their members and each have lobbed their fair share of loam at each other. As the Review Department put it:

> Albert was admitted to practice law in December 2000, and has no prior record of discipline. She is a consumer advocate attorney and often represents homeowners in residential and/or mortgage litigation cases. While this matter was pending in the Hearing Department [filed 12/15/15], Albert was engaged in civil litigation against the State Bar [filed 12/22/15], claiming retaliation for exposing its purported practice of prosecuting consumer advocates for revenue. [Opn pg 2]

However, on March 9, 2018 in reliance that Petitioner's status that she was still able to practice law she filed papers to run for Orange County District Attorney. On March 16, 2018 she was informed of a local blog post captioned Suspension Day with her name on it. On March 20, 2018 the State Bar uploaded a document to her webpage informing her the State Bar suspended her license effective February 14, 2018.

"Such a case "touches a sensitive and important area of human rights," and "involves one of the basic civil rights of man," presenting questions of alleged "invidious discriminations . . . against groups or types of individuals in violation of the constitutional guaranty of just and equal laws." 316 U. S., at 536, 541. *Reynolds v. Sims*, 377 US 533, 561 (1964).

Undoubtedly, the right of suffrage is a fundamental matter and so too must the right to fun for office be unencumbered and not shrouded by a State Bar putting doubts as to the legitimacy of the candidate on the ballot. As this Court said, "the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized. Almost a century ago, in *Yick Wo v. Hopkins,* 118 US 356 (1886), the Court referred to "the political franchise of voting" as "a fundamental political right, because preservative of all rights." 118 U. S., at 370. *Reynolds v. Sims,* 377 US 533, 562 (1964).

"Legislators represent people, not trees or acres." Id. Attorneys do, too. The State Bar's actions are retaliatory and the Court should use its discretion to review this case it is not just one affecting attorneys. It affects people who want a real choice when voting for the next District Attorney and people who want representation free and unimpaired without this cloud of disqualification. *Reynolds v. Sims,* 377 US 533 (1964). The right to vote is being debased and diluted by putting fear into the general public that a vote for Petitioner may not count. Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy. The same should be true of our attorney disciplinary system, too. *Purcell v Gonzalez* (2006) 127 S.Ct. 5 (2006), 549 U.S. 1, 166 L.Ed.2d 1

E. Whether California State Bar prohibition of allowing lawyers to prove the orders being prosecuted were void makes California Business & Professions Code Section 6103 unconstitutional.

Agencies should provide regulated parties (attorneys) fair warning of the conduct a regulation prohibits or requires. *Christopher v SmithKline Beecham,* 567 U.S.142, 156 (2012)

However, the California State Bar is not a government agency. It is sui generis. This court has never determined if an administrative arm of a Constitutional Court should give administrative notice, meaning fair warning of the conduct a regulation prohibits or requires. This court should expand upon In re Ruffalo to find that such fair warning is required under these circumstances, too.

There was no warning here that the State Bar would consider the failure to pay on a void civil discovery order (attorneys fees – not a sanction payable to the court) would lead to suspension if it went unpaid and not appealed by the attorney. There was no warning that failing to answer one discrete question by the State Bar during a time where Petitioner was literally answering dozens of questions and had produced over 1,000 documents to the State Bar in a handful of investigations it opened up that she could be considered to have failed to investigate or cooperate with the State Bar in any manner. Yet this is what happened leading to the suspension of her license to practice law. Petition for review should be granted. *In re Ruffalo*, 390 U.S. 544, 550, 88 S. Ct. 1222, 1226, 20 L. Ed. 2d 117 (1968)

The State Bar refused to let Ms. Albert prove that the documents were not valid orders, considering it irrelevant. [RT 1:118-119] The relevancy of valid vs void order is an issue of great importance that this Court should determine. By ignoring the rules set out by the Legislature, the State Bar is demonstrating its contempt for the real law. Nothing in the charges gave Petitioner notice that the State Bar would suspend her license for failing to follow a "void" order. The NDC did not describe the order as void. It was not until after she attempted to submit evidence at trial that the order was void, did the judge rule that it was irrelevant on the grounds, it made no difference under section 6103 if the order was void or not – all that mattered was that she violated it. If she had known this was the charge before trial she could have done many things including getting an order expunging the void orders, or an expert to testify that they were void. *In re Ruffalo,* 390 U.S. 544, 550, 88 S. Ct. 1222, 1226, 20 L. Ed. 2d 117 (1968)

The California Legislature declared there could be no valid discovery sanction order against an attorney if the attorney's name and amount of sanction was not listed in the Notice of motion and caption. CCP § 2023.040. *In re Marriage of Fuller* (1985) 163 CalApp 3d 1070, 1076.

Additionally, the Commissioner who signed the documents thereafter recused himself for bias making those orders void on an independent basis. *Hayward v Superior Court* (2016) 2 CalApp 5th 10. No one thought those orders were valid until one day after the State Bar filed its NDC. Then attorney Jennifer Needs filed liens at the Recorder's office – three and one-half years later – under the protection of the State Bar.

By prosecuting Ms. Albert for not obeying orders that the State Legislature has deemed void or unlawful, the State Bar has usurped the legislative branch in order to violate Petitioner's due process rights and her right to her license and to practice in her profession. Fourteenth Amendment to the US Constitution (VIX Amend US Const Art I) One federal court was able to weigh in on Section 6103 finding it is not free from constitutional constraint before losing jurisdiction over the matter. *Canatella v Stovitz* (ND CA 2005) 365 F. Supp2d 1064, 1073-1074.

The State Bar Court split up §6103 into two parts: (1) violation of a court order and (2) violation of attorney's oath or duties and disciplined Ms. Albert on the purported basis it proved by clear and convincing evidence the former. As the United States Supreme Court noted in the case of *Chisom v Roemer*, "[i]t would distort the plain meaning of the sentence to substitute the word "or" for the word "and." Such radical surgery would be required to separate the [violation of an order of the court from the violation of an oath taken]." *Chisom v. Roemer*, 501 U.S. 380, 397 (U.S. 1991)

Under the State Bar's current construction and application of Cal Bus & Prof Code §6103, the State Bar can suspend or disbar a member of the State Bar who overpays a discovery sanction warranting the grant of review.

F. Whether California State Bar's suspension of an attorney's license to practice law for failure to pay a private third party a debt violates the attorney's Fifth and Fourteenth Amendment.

This Court has never determined whether a State Bar can act as a debt collector and suspend a license on the basis that the Bar member failed to pay a private third party a purported debt that would be dischargeable in bankruptcy.

The creditor was not Petitioner's clients, the court or the State Bar. It was not a court ordered sanction to punish her. It was an award of attorney fees to the other side against her and her client jointly and severally at most. The State Bar came in and started prosecution before litigation had even concluded between the parties who were still on appeal in the main wrongful foreclosure case. The State has shown a compelling interest in withholding a license for payment of child support, but this Court has never determined if a license to practice law can be withheld on the basis that the attorney did not pay what would amount to be an ordinary creditor. Is the State Bar now some super Debt Collector out there for anyone who wants payment from an attorney?

G. Whether California State Bar prohibition of allowing lawyers to prove cooperation with State Bar investigations with evidence of other simultaneous ongoing investigations makes California Business & Professions Code Section 6068(i) unconstitutional because it is vague, uncertain or overbroad.

California State Bar found that Petitioner answered the State Bar but the answer was inadequate in violation of Bus & Prof Code 6068(i) as to the Sisson complaint. That was the only charge as to Sisson which was a former client. There is no substantive requirement in Bus & Prof Code 6068(i). To read a substantive requirement into the statute would be violating Ms. Albert's Fourteenth Amendment rights because that was not what was alleged in the NDC. [EX JJ and YY; RT 1:51; 1:77-80, 92]

The Notice of Disciplinary Charges ("NDC") itself was proof that Ms. Albert was contemporaneously cooperating with the State Bar because it contained charges from three other State Bar Complaints (2 Koshak; 1 Spinosi) without a §6068(i) violation charged. *In the Matter of Hundin* (Review Dept. 1997) 3 Cal State Bar Ct. Rptr. 657

When the California Supreme Court was required to review the State Bar hearings, it was found that a member's communication with the State Bar on other matters in the same time frame "constituted contemporaneous cooperation with the State Bar regarding additional investigative letters subsequently sent to [Ms. Albert]." *In the Matter of Hundin* (Review Dept. 1997) 3 Cal State Bar Ct. Rptr. 657.

Petition for review is warranted.

Taking away Ms. Albert's license to practice law was the product of lack of due process now afforded attorneys caught in California State Bar's disciplinary system. *In re Rose* (2000) 22 Cal 4th 430, 459. The purpose of discipline is to protect the public not castigate it into oblivion. Ms. Albert has done a fine job of advocating for consumers during her career. *See, Lueras v BAC Home Loans,* (2013) 221 CalApp4th 49, *Majd v Bank of America,* (2015) 243 CalApp4th 1293, *Womack v Lovell,* (2015) 237 CalApp4th 772, and *Mackovska v Bank of America,* B27180, (8/15/17) unpublished.) She helped to stop foreclosure sales of over 1,000 homes in *Yau v Deutsche Bank Natl Trust Co. et al* (SACV 11-cv-0006-JVS). She has donated many hours to public service. Ms. Albert was *not* sanctioned because she did not uphold high professional standards and competently represent her clients, she was disciplined because *she did not have the economic status to pay a private third party money that would be deemed dischargeable in bankruptcy.*

Respondent and many in her same position like Scheer, Taggart, and Findley, have a <u>Fourteenth Amendment</u> right regarding their license to practice law. While the Constitution contemplates that democracy is the appropriate process for change, individuals who are harmed need not await legislative action before asserting a fundamental right and this Court should use its discretion to answer these important questions about federal law.

CONCLUSION

The petition for a writ of certiorari should be granted.

Dated: May 15, 2018

Respectfully Submitted,
LAW OFFICES OF LENORE ALBERT

/s/ Lenore Albert
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